REMARKS

Reconsideration is requested.

Claim 15 stands rejected under 35 U.S.C. §112 as lacking sufficient antecedent basis for the limitation "the transmitter" in line 2. Claim 15 has been amended to positively recite a backscatter transmitter and obviate the rejection.

Claims 1, and 3-10 stand rejected under 35 U.S.C. §101 as claiming the same invention as that of claims 1-9 of U.S. Patent No. 6,693,513 to Tuttle.

A statutory type double patenting rejection is only proper if the claims in a patent application and claims in a patent are drawn to identical subject matter. A reliable test for double patenting under 35 U.S.C. 101 is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent. *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970). If there is an embodiment of the invention that falls within the scope of one claim, but not the other, then identical subject matter is not defined by both claims and statutory double patenting would not exist.

Claim 1 of U.S. Patent No. 6,693,513 recites a push-on and push-off switch...controlling whether the circuitry provides the signal, while claim 1 of the present application recites a push-on and push-off switch ...configured to control whether the circuitry provides the signal. It is possible that there is a device that is not in operation that would be infringed by claim 1 of the instant application

that would not be infringed by claim 1 of U.S. Patent No. 6,693,513. Thus, there is an embodiment that does not which would infringe claim 1 of the instant application which would not infringe claim 1 of U.S. Patent 6,693,513. Therefore, statutory double patenting does not exist.

Claims 1, 3-6, 11-14, and 16-22 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 3-7 of U.S. Patent No. 6,768,415. Enclosed herewith is a Terminal Disclaimer which obviates the rejection.

Claims 2 and 11-22 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 10-14, 28-30, and 32-35 of U.S. Patent No. 6,693,513. Enclosed herewith is a Terminal Disclaimer which obviates the rejection.

In view of the foregoing, allowance of claims 1-22 is respectfully requested. The Examiner is requested to phone the undersigned at any time in the event that the next Office Action is one other that a Notice of Allowance

Respectfully submitted,

Dated: June 14, 2005 By: _____
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